REMARKS/ARGUMENTS

Claims 11-20, 22-29, and 31-33 remain in this application. Claims 21 and 30 are currently canceled, and Claims 1-10 were previously canceled. Claims 1-10 had been previously withdrawn as the result of an earlier restriction requirement. Applicants retain the right to present previously withdrawn, and currently canceled, Claims 1-10 in a divisional application.

In the above amendments the recitations and subject matter of Claim 21 have been incorporated into its parent Claim 11, and the recitations and subject matter of Claim 30 have been incorporated into its parent Claim 23.

The requested amendment raises no new issues that would require further consideration and/or search, and it raises no issues of new matter. It also would place the application in better form for any appeal taken by materially reducing or simplifying the issues for any such appeal.

Claim Rejection under 35 U.S.C. § 103(a)

Claims 11-33 have been rejected under 35 U.S.C. § 103(a) over Ohmura et al. (U.S. Patent No. 5,846,585).

Applicants traverse for at least the following reasons.

Applicants point out that Ohmura et al. teaches compression of *baked untoasted* bread, freezing the bread while it is in a state of compression, holding the compressed frozen bread for a substantial amount of time up until just before serving, and then microwaving to heat up the bread and recover the compressed

volume. For this recovery of volume to occur, it is essential for the bread to have sufficient moisture and sufficient protein in the form of wheat gluten to accomplish this. The bread of Ohmura et al. retains springiness and ductility. The protein is hydrated and strong.

The problem to be solved in the present invention is completely different. In the instant application, the problem confronted relates to previously-baked bread that is 1) sliced, 2) *toasted*, and after freezing, 3) micro-waved. The bread slice is toasted to provide crunchiness of the crumb surface. Unfortunately, prior to the present invention, after freezing and then finally microwaving by the consumer, this would make the outside or perimeter crust extremely dried out, hard, and difficult to chew. So the problem addressed by the present inventors was how to make this otherwise dried out, hard, and tough crust area acceptable to consumers. The present inventors' solution is to crack (to break) the dried-out bread fibers physically before freezing and reheating the toasted bread. That is, a relatively rapid compression is done on the toasted bread slice adequate to snap the toughest crust bread fibers. In this way, when the consumer bites into the toasted bread, such as after freezing and reheating, the toughest fibers are already broken and are therefore easier to chew.

The Final Office Action states "[i]t is notoriously well known in the art to toast bread product." Applicants have no disagreement with that statement per se. But baking, then toasting, then freezing, then micro-waving creates a problem, tough crust, which is quite difficult to solve. Moreover, Applicants have discovered an effective solution for the problem

as claimed in the present application.

Ohmura et al. nowhere describes toasting bread slices in particular, much less prior to a mechanical compression treatment. Instead, Ohmura et al. describes heating fermented bread dough in an oven for baking at a temperature of about 150 to 250°C for 5 to 30 minutes (see, e.g., col. 6, lines 39-43).

Applicants point out that Ohmura et al. is essentially attempting to provide a very moist bread similar to a fresh bread, whereas the present invention relates to overcoming a problem inherent in a very dry slice of bread where the crust has been exposed to high heat twice and becomes, after microwaving (heating a third time) by the eventual consumer, extremely tough unless processed according to the present invention. Ohmura et al., instead, compresses the bread, holds the bread in compression while freezing takes place and keeps the bread compressed until the consumer heats it up in the microwave just before its consumption; whereas the present invention instead compresses the sliced toast rapidly enough and with enough force to break the toughest fibers in the crust area.

Again, Ohmura et al. nowhere mentions toasting, and this is not surprising given that their goal is to provide a fresh bread, whereas in the present invention the bread slices are always toasted which further dries it out. So Ohmura prefers very moist bread, whereas in the present invention the bread is sliced and then toasted to drive out moisture and gain crunchiness. Ohmura et al. instead desire a flexible and ductile bread so that it will recover the vast majority of its volume when microwaved by the consumer, whereas in the present invention after toasting the

bread slice, major parts of the crust area are brittle. Also, Ohmura bakes the bread once, whereas, in the present invention, after baking, the bread slice is toasted to essentially provide two significant heat treatments, the second of which (the toasting) drives off moisture and creates a structure in the crust which is especially tough and difficult to chew when the product is microwaved by the consumer *unless* it has been processed according to the present invention. As can be appreciated, a toaster, toaster oven, flat grill-toaster or the like works by applying radiant or conductive heat directly to a pre-baked bread slice, not dough, such that when the pre-baked bread slice's surface temperature reaches a toasting temperature, which can depend on the type of bread crumb, a change known as the Maillard reaction begins in which sugars and starches start to caramelize - turn brown - and to take on intense flavors, forming toast. Ohmura et al. only describes baking or semi-baking bread, not toasting.

Applicants acknowledge that Ohmura et al. mention "slicing" at Column 6, line 47 thereof. However, viewing the entire relevant passage in context (i.e., Col. 6, lines 39-64), one of ordinary skill would appreciate that "slicing" would not be optimal in Ohmura et al.'s practice because moisture would be expected to escape from the baked bread if sliced. Although the Final Office Action urges that Ohmura et al. "teach compressing [a] slice of bread," it is reiterated that even if that is the case, for sake of argument, that the slice is at most only baked and untoasted at the time of "the treatment" mentioned at Col. 6, line 47, whatever that particularly may be.

Of course, in the present invention, not only is the bread sliced, which releases moisture, but then the bread slice is also toasted to significantly reduce moisture further still, which in the absence of the compression processing according to the present invention would create an outer crust that becomes, after freezing and microwaving (reheating), extremely tough and difficult to chew, presenting a completely different problem than the one(s) faced by Ohmura et al.

Further, in the same passage thereof (i.e., Col. 6, lines 39-64), Ohmura et al. state that it is preferable to have a product where the crust portion is at least 70% of the total surface area to minimize moisture loss (Col. 6, lines 60-64). By comparison, the bread slice crust in the present invention is typically only about 15% of the total surface area and almost all of the moisture is lost. This also indicates why the problem faced and solved in the present invention is different from Ohmura et al.'s and why the solution of Ohmura et al. is not relevant to the present invention.

On the subject of applying oil, this is a further method of addressing the problem of tough dried-out crusts after microwaving. Since the environment of the present invention does not allow for adding water without making the toast soggy and losing the crunchiness on the cut, crumb surface, the present application, in a further embodiment, provides for application of oil to the perimeter crust area of a piece of toast specifically for the purpose of further reducing the toughness of the dried out crust without adding moisture, and it works.

The Final Office Action also suggests that "Ohmura et al teach the same method of compression" as the present application. As stated above, the compression of Ohmura requires that the bread be frozen while it is still in a state of compression and that the compression is held until such time as the product is microwaved. It is consistent with a moist product where the protein is hydrated and ductile and where it springs back to close to its original volume upon reheating in the microwave. However, the compression of the toasted bread slices in the present application is relatively rapid and designed to fracture the extremely tough, dried out, twice heat treated outer crust part of the toasted bread slice. Therefore, Applicants disagree that Ohmura et al. teach the same method of compression as the present invention.

Also, it is impossible for Applicants to make any direct comparison with an actual example from Ohmura et al. to experimentally test the assertion made in the Final Office Action that "...any benefit resulting from the compression will obviously be found in the Ohmura et al product," as was suggested in the Final Office Action, as a *toasted* sliced bread product is not to be found within the four corners of Ohmura et al. Assertions of inherency can not be properly premised on hypothetical prior art.

In view of the above, Applicants respectfully submit that a *prima facie* case of obviousness has not been established based on Ohmura et al. against any of the present claims 11-20, 22-29 and 31-33, accordingly, they request reconsideration and withdrawal of this rejection.

CONCLUSION

In view of the above, it is believed that this application is in condition for allowance, and notice of such is respectfully requested.

Respectfully submitted,

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